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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

KRISTY COLLATT LATTIER

CIVIL ACTION NO.: 06-2413

VERSUS

JUDGE DOHERTY

TEAM INDUSTRIAL SERV., INC., ET AL.

MAGISTRATE JUDGE METHVIN

MEMORANDUM RULING

Pending before this Court is the "Motion for Summary Judgment Dismissing Plaintiff's Claims Against Team Industrial Service, Inc." filed by defendant Team Industrial Services, Inc. ("Team") [Doc. 62]. The motion is opposed by plaintiff Kristy Collatt Lattier [Doc. 68].

The procedural posture of this ERISA matter is unique. All ERISA Case Order deadlines have been satisfied, and the parties were given a trial briefing schedule. The parties have filed their trial briefs, and a status conference is scheduled in open court on February 27, 2009 to address questions this Court has concerning those trial briefs.

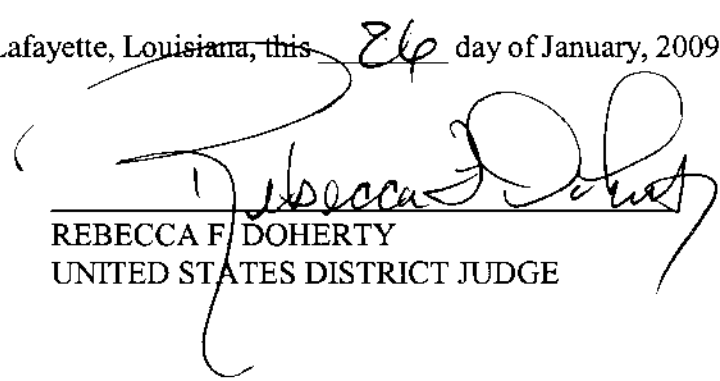
In addition to filing a trial brief, defendant Team has filed the instant motion for summary judgment. In a brief entitled "Team Industrial Services, Inc.'s Trial Brief and Memorandum in Support of Motion for Summary Judgment on Breach of Fiduciary Duty Claims," Team states its trial brief is "submitted in support of [the motion for summary judgment] as well." Thus, it appears Team is seeking to dispose of plaintiffs' claims against it in both a summary manner and by way of a merits proceeding.

While a motion for summary judgment might, under certain circumstances, be an appropriate vehicle by which to dispose of issues raised in this matter, Team has filed its "trial brief" as both a

memorandum on the merits and in support of its motion for summary judgment. Consequently, this Court shall resolve the issues raised within the context of the trial on the merits and the trial briefs filed by the parties. Consequently, Team's motion for summary judgment is DENIED. Because Team's trial brief addresses the same issues as those raised in its motion for summary judgment, Team is not prejudiced thereby.

Therefore, IT IS ORDERED that the "Motion for Summary Judgment Dismissing Plaintiff's Claims Against Team Industrial Service, Inc." filed by defendant Team Industrial Services, Inc. [Doc. 62] is DENIED [Doc. 62]. This Court will proceed with all issues raised in this matter in the context of a trial on the merits and the trial briefs filed by the parties.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 26 day of January, 2009.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE